

A. G. Contract No. KR93-0691-TRN  
ECS File: JPA-93-23  
PHOENIX File: 65409  
TRACS No.: H 3565 01D  
Project: Pima Freeway (101L)  
Section: I-17 - 56th Street  
Interim Roadway

*Don*  
*for revision*  
*Comments*

**INTERGOVERNMENTAL AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PHOENIX

THIS AGREEMENT is entered into 28 July, 1993,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
CITY OF PHOENIX, acting by and through its City Council (the  
"City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. City is empowered by Arizona Revised Statutes Section  
48-572 and City Charter, Chapter II, Section 2 to enter into  
this agreement and has by resolution, a copy of which is  
attached hereto and made a part hereof, resolved to enter into  
this agreement and has authorized the undersigned to execute  
this agreement on behalf of the City.

3. The State and the City desire to share in the cost of  
constructing a four (4) lane interim, staged-constructed,  
roadway on the Pima Freeway, between I-17 and 56th Street,  
utilizing a combination of frontage roads and ultimate freeway  
cross-sections as necessary, herein referred to as "the  
Project".

NO. <u>17873</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>07/28/93</u>
<u>Richard Mahoney</u> Secretary of State
By <u>Dicky V. Greenwood</u>

4. The proposed funding for the Project, as set forth in the approved Arizona Department of Transportation's (ADOT) Five-Year Program and contingent upon ADOT's Board approval, includes \$3 million for design (\$400,000 from the State in Fiscal Year (FY) 1993-94 and \$2.6 million in FY 1994-95) and \$30 million for right of way acquisition and construction, (\$15 million from the City, and \$15 million in Maricopa Association of Governments (MAG) Intermodal Surface Transportation Efficiency Act (ISTEA) funds programmed for the beginning of FY 1996-97).

5. The purpose of this agreement is to set forth the responsibilities of each party relative to the construction schedule, the obligation of funds, contract bid, selection, administration and maintenance of the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## II. GENERAL PROVISIONS

1. The parties hereto agree to design the Project in FY 1994-95 and establish a construction schedule which reflects the availability of funds with the intent of awarding the construction bids in July 1996 and of completing construction by the middle of 1997. *project an*

*A 1997 Update would be October 1997 Award and completion in the middle of 1999.*

2. The Project will include a "pass through drainage system" or any other cost-effective drainage plan for the Project. The State will continue to coordinate with the City and the Maricopa County Flood Control District (MCFCD) regarding other drainage systems which may require modifications prior to construction. The cost of drainage facilities constructed by others, which are germane to the freeway facility are to be credited towards the City's portion of the funding. *Update of this City of Phx credit is \$5.78 Million, not the \$7.5 mil. previously used by the City.*

3. The City and State understand that Federal ISTEA funds are identified for part of the joint sponsorship funding of the Project. The State has undertaken an environmental assessment due to be completed by October of 1993 to make this segment of the Pima Freeway eligible for federal funds. In the event this section of the roadway is not certified eligible for federal funds, the City and the State agree to meet and attempt to identify projects where federal funds could be applied and monies "swapped out" for use of this Project. The City and State also agree that until the environmental assessment is approved by the federal government, the City and State will not expend funds or cause funds to be expended for this Project.

In the event the federal ISTEA funds are not available as anticipated, either party may cancel this agreement; the City will be responsible for all design costs incurred by the State for the unusable portion of the design, up to the date of cancellation. The parties hereto agree that the State Engineer would make the initial determination of the "usable/unusable portion" of the design and notify the City. The City would then have the option of appealing to the Director of the Arizona Department of Transportation. The parties fully understand that any changes in funding must be reviewed and approved by the MAG Regional Council.

4. If the State determines that the ultimate Agua Fria/Pima Freeway from I-10 to Tempe, or any part thereof, will be constructed as a toll road, this agreement and the construction schedule for the Project shall remain in force, except that the City may decide, at its discretion, to have an appropriate amount of local funds applied towards construction of a toll road. If the City determines that a Agua Fria/Pima Freeway toll road from I-10 to Tempe can be built within twelve (12) months of the Project construction schedule specified in this agreement, and provided that the toll road proposal as it affects this Project is in the best interest of the City as determined by the City, the City staff will recommend that the City Council act to terminate this agreement concurrent with the signing of a new agreement concerning the toll road roadway segment and schedule.

### III. SCOPE OF WORK

1. The State will:

a. Contingent upon the ADOT's Board approval, advance \$2.6 million for design of the Project in FY-1994-95. The Design will begin in sufficient time to allow for bid award by 31 July 1996. If, due to a default by the City, including the unavailability of ISTEA funds, the State will subtract the cost of the unusable portion of the design from the amount it owes the City (under agreement JPA 92-108) for the Squaw Peak right of way purchases at the time the State is required to repay such funds to the City.

b. Prior to commencing design activities, prepare a revised conceptual estimate to determine the estimated right of way and construction costs for the Project. If the revised estimate exceeds the programmed funds of \$30 million, the City and the State will use their best efforts to revise the scope of the Project so as to reduce the estimated costs below \$30 million. In the event the scope cannot be feasibly reduced, this agreement will be cancelled.

*revised*  
*A 1997 update of the bid award date is projected to be October 1997.*

c. Acquire the right of way necessary to construct the Project from I-17 to 56th Street. ~~The State will not make use of eminent domain actions to acquire rights of way required for the construction of the Project.~~ The State, upon approval of the ADOT's Board, will authorize the City to acquire (in the name of the State) any rights of way for the Project that the State is unsuccessful in obtaining, and will credit the City up to the State's approved appraised value, plus approved relocation costs. All acquisition costs above appraised value and approved relocation costs, will be borne by the City and are not to be credited against the \$30 million programmed for the Project.

*Delete??**Delete??*

d. Invoice the City for right of way acquisition costs as they occur. The State agrees to commence right of way acquisition in a timely manner to minimize potential delays in construction.

e. Prior to advertisement for bids on construction of the Project, prepare an engineers estimate based on the completed design and invoice the City for the construction cost of the Project. If the estimate exceeds the remaining programmed funds (after right of way purchases are complete), the City and the State will use their best efforts to revise the Project to reduce the estimated cost below the available funding. In the event the scope cannot be feasibly reduced, the City will be responsible for all costs above the programmed amount. In the event the City cannot secure such additional funds, this agreement will be cancelled. However, the City will reimburse the State for all design expenses incurred up to the date of cancellation as specified in Section III 1.a. herein.

f. Upon receipt of the funds from the City and MAG ISTEA funds as currently programmed, (total funding must be remitted) advertise the Project for construction.

g. Upon award of the State's construction contract, using the contractor's unit bid prices and including 12% for construction engineering and contingencies, compile a detailed accounting to determine any adjustments to the City's funds received prior to award. If appropriate, the State will remit payment to the parties in the ratio in which each party contributed to the joint sponsored project.

h. Administer the Project and make all payments to the contractor. Be responsible for any contractor claims and change orders on the Project attributable to the State.

i. Upon completion of the Project, maintain the portion of the roadway, which will become the Pima Freeway mainline.

## 2. The City will:

a. In the event of a default by the City including the unavailability of ISTEA funds, credit the State for all design costs incurred in the manner specified in Section III 1.a, herein.

b. Reimburse the State for any ~~additional~~ design costs incurred by the State as a result of modifications or delays which are attributable to the City.

c. Review the State's revised conceptual estimate. If the revised estimate exceeds the programmed funds of \$30 million, the City and the State will use their best efforts to revise the scope of the Project so as to reduce the estimated costs below \$30 million. In the event the scope cannot be feasibly reduced, this agreement will be cancelled.

~~d. If necessary, exercise its power of eminent domain to acquire right of way (in the name of the State) for the Pima Freeway, if the State is unsuccessful in acquiring said right of way at the State's approved appraised value, plus approved relocation costs. All acquisition costs above the approved appraised value and approved relocation costs, will be borne by the City and are not to be credited against the \$30 million programmed for the Project.~~

Delete?

e. Upon receipt of an invoice from the State, for right of way purchases, remit payment for said purchases within 60 days.

f. Review the State's engineers estimate. If the estimate exceeds the remaining programmed funds (after right of way purchases are complete), the City and the State will use their best efforts to revise the Project to reduce the estimated cost below the available funding. In the event the scope cannot be feasibly reduced, the City will be responsible for all costs above the programmed amount. In the event the City cannot secure such additional funds, this agreement will be cancelled. However, the City will reimburse the State for all design expenses incurred up to the date of cancellation as specified in Section III 1.a. herein.

Leave In??

~~g. Upon receipt of the invoice from the State and prior to bid advertisement, remit payment for the construction costs of the Project.~~

*a projected in August 1997 (1.72 mil.)*

*This amount is now updated and represents the difference between the 7.5 mil. originally credited to the City and the actual amount of 5.78 mil. of Drainage work credit.*

*Leave payment In!!*

h. Reimburse the State for any additional construction costs which are incurred by the State as a result of modifications or delays which are attributed to the City.

i. Upon completion of the Project, maintain the portion of the Project which will become the frontage roads for the ultimate Pima Freeway and all traffic signals installed as part of the Project.

#### IV. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

City of Phoenix  
City Manager  
251 W. Washington  
Phoenix, AZ 85003

7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.